IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

RSA.239 of 1995

Reserved on 7.8.2007.

Date of Decision : 29th August,2007 .

Kanhiya Ram …Appellant.

Versus:

Het Ram and others. ..Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Bimal Gupta, Advocate with Mr.K.S.Kanwar, Advocate.

For Respondents. Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate.

Sanjay Karol, J .

The present appeal has been admitted on the following substantial questions of law:

"1. Whether learned lower appellate court has not considered Ext.PW8/A, Ext.PW 8/B in right perspective and, therefore, impugned judgment, decree is liable to be set aside?.

2. Whether learned lower appellate Court has misconstrued, misinterpreted material on record

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

and the view taken by the lower appellate court is not possible on the basis of material on record?.

The appellant herein has assailed the judgment and decree dated 26th May, 1995 passed by District Judge, Shimla in Civil Appeal No. 64-S/13 of 1992 dismissing the appellant's appeal against the judgment and decree dated 28th August, 1992 passed by Sub Judge, Ist Class (3), Shimla, whereby the trial Court dismissed the plaintiff's suit. Thus, the present appeal has been filed against the concurrent finding of fact as held by the Courts below.

For the purpose of convenience the appellant hereinafter referred is to as `plaintiff' and the respondents as `defendants'.

The plaintiff filed a suit against the defendants seeking a declaration and permanent prohibitory injunction, inter alia contending that he being non occupancy tenant, had become owner of the suit property by virtue of the provisions of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as `the Act') and was entitled to a declaration that he is the owner of the property in question. The sale deed pertaining to the part of the suit land executed in favour of defendant No.1 by defendant No.2 was assailed to be void.

The suit was resisted by defendants No.1 and 2, inter alia, on the ground that the plaintiffs's plea is sham, false, concocted and baseless which is evident from the plaintiff's application for grant of Nautor land (Ext.PW-8/A), wherein there is no reference of the suit property and further another part of the suit property was sold by defendant No.2 in favour of defendant No.4. Plaintiff's sons' i.e.defendants No. 3 and 4 are actually residing with him and plaintiff was in the knew of the said sale. In the absence of any challenge to the sale in favour of his sons the suit could not have been assailed. Therefore, the stand of the plaintiff is itself contradictory.

Defendants No. 3 and 4 have supported the plaintiff but have admitted purchasing part of the suit land from defendant No.2 vide sale deed dated 25th September, 1987. The trial Court framed the following issues:

> "1.Whether the plaintiff is owner in possession of the suit land?
>
> ..OPP.
>
> 2.Whether the sale deed executed by the defendant No.2 in favour of defendant No.1 or any other person is null and void?
>
> …OPP.
>
> 3.Whether the plaintiff is entitled for the relief of permanent prohibitory injunction?
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> …OPP.
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> 4.Whether the suit is not maintainable?
>
> …OPD.

5.Whether the suit is barred by limitation?

…OPD.

6.Whether the plaintiff is estopped to file this suit by his act and conduct as alleged?

…OPD.

7. Relief.

Issues No.1,2 and 3 were decided against the plaintiff and issues No.4 and 6 were decided as having become redundant and issue No.5 was not pressed.

The finding of the trial Court was based on the statements of the witnesses and documents proved on record. The Courts below have found that Jamabandies/revenue record entries for the years 1981-82 (Ext.PX-1), 1957-58 (Ext.PX-2), 1974-75 (Ext.PX-3), 1979-80 (Ext.PX-4), 1976-77 (Ext.PX-5), 1963-64 (Ext.PX-7) and 1983-84 (Ext.PX-8) show that the suit land is recorded in the ownership and possession of defendant No.2. The Court found that there is not even a single document supporting the plaintiff's contention, except Ext.PW-8/A and Ext.PW-8/B which shall be dealt with subsequently.

The statement of the witnesses and the evidence led by the plaintiff has found to be un-reliable and not convincing at all. The plaintiff has not been able to rebut the entries of revenue records (jamabandies) which attach presumption of truth. It is an admitted fact that defendants No.3 and 4 are residing with the plaintiff and they have also

purchased part of the suit land from defendant No.2. It has come on record that the plaintiff's application for correction of the revenue entries, under the provisions of the `Act' stands dismissed. The Court found that the suit property was never in the possession of the plaintiff conferring the rights under the `Act 'as claimed for by the plaintiff. It has come on record that defendant No.1 is in possession of the suit land pursuant to the sale deed Ext.DX-1 executed in his favour by defendant No.2. This fact is also corroborated by the statement of PW-4 Mathu Ram. The fact that the sale was effected and the possession handed over to defendant No.1 by defendant No.2 is also corroborated by plaintiff's witnesses, namely, Chet Ram PW-3, Mathu Ram PW-4 and Lachhi Ram PW-5.

The plea of the plaintiff that he did not know the execution of the sale deed in favour of his sons has been found to be un-acceptable, particularly when his sons were residing with him.

In contrast, the Court found the version of defendant No.1 through his oral and documentary evidence to be absolutely convincing, cogent and credible.

Learned counsel has assailed the concurrent finding of fact of the Courts below on the basis of certificate Ext.PW-8/A issued by Patwari Durga Nand (PW-8). This certificate has been issued in the absence of the contesting

defendants and that too without any authority of law. The Patwari has no authority or jurisdiction to issue the same. Be that as it may, the Patwari in his deposition in the Court has admitted that the said certificate was issued without visiting the spot. He even did not know the khasra number of the land about which the certificate was issued. The certificate is un-dated. He has further stated that he does not remember whether the possession of the land in relation to which the certificate was issued to the plaintiff was upto October, 1987 or not. The Courts below have considered the relevance and significance of the said certificate and rejected the contentions of the plaintiff that the same is indicative of his possession as tenant.

Ext.PW-8/B is an application filed by the plaintiff before the Gram Panchayat allegedly pertaining to the suit land. A perusal of the said application would show that the dispute was not in relation to the subject matter of the suit property but with regard to a "Kuhal" (water canal).

The courts below, in my view, have rightly not relied upon the same and rejected the plaintiff's contention that the said application would show his possession on the suit land. A perusal of the said document, in fact, would also show that it only mentions the fact that the plaintiff is in possession of land belonging to defendant No.2 but it does not mention the khasra number or gives details thereof.

That apart the application is not even in relation to the dispute between the parties to the suit.

In my view, the Courts below have, therefore, considered Exts.PW-8/A and 8/B in its correct perspective.

In my view, questions No1 and 2 are not even substantial question of law however, the entire record has been looked into by me and I do not find any illegality, infirmity, perversity or error apparent on the face of the record necessitating interference by this Court.

The defendants' evidence is cogent and reliable and it is settled principles of law that erroneous findings of fact, even if grave in nature, cannot be interfered with in second appeal. {Pakeerappa Rai Vs.Seethamma Hengsu Dead by LRs. And others (2001) 9 Supreme Court cases 521.)}

In my opinion, the learned trial Court has rightly dismissed the suit of the plaintiff and first appellate Court also correctly re-appraised the evidence and confirmed the judgment and decreed passed by the trial Court. The contention raised in this second appeal is liable to be rejected. The findings are not vitiated for want of exercise of jurisdiction in determining the real point of controversy and further both the courts below have not misread the pleadings or failed to appreciate and discuss the evidence

on record. The questions are answered accordingly. The appeal is dismissed.

(Sanjay Karol),
Judge.

August ,2007(R).